IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.No.494 of 2001

V.R.Parthasarathy .. Appellant/Plaintiff

vs.

1.Boominathan
2.B.Karpagasundari

3.State of Tamilnadu
rep by Secretary to Govt.
Revenue Department,
Fort St.George, Chennai-9. .. Respondents/Defendants

Prayer: This Appeal Suit has been filed under Section 96 of C.P.C against the Judgment and Decree dated 29.03.2001 in O.S.No.7811 of 1996 passed by the II Additional City Civil Court, Chennai.

For Appellant : Mrs.Chitra Sampath
For Respondents : Mr.R.Gandhi, Senior Counsel,
for Mr.A.R.Nixon (For R1 and R2)
For R3 : No Appearance

JUDGMENT

This Appeal Suit has been preferred against the Judgment and Decree in O.S.No.7811 of 1996 passed by the II Additional City Civil Court, Chennai. The plaintiff who has lost his case before the trial Court has preferred this appeal. The suit is for declaration that the plaintiff is the absolute owner of the suit property, for consequential injunction and for mandatory injunction to remove the fence put up by the defendant in the suit property.

WEB COPY

2.The short facts of the case of the plaintiff in the plaint relevant for the purpose of deciding this appeal sans irrelevant particulars are as follows:-

The Assistant Commissioner of Urban and Land Tax Kundrathur, Chennai had initiated proceedings in respect of the suit property in RC.No.3831/85A dated 27/28.4.1989 under the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1976. Against this, the plaintiff had filed Writ

https://hcservices.ecourts.gov.in/hcservices/

Petition No.6686/1989 to quash the proceedings and also sought stay of all further proceedings and the Hon'ble High Court had granted stay in W.M.P.No.9602/1989 on 31.05.1989. The plaintiff came to understand that the defendants have encroached on the northern side of the proeprty by about 3384 sq.ft of land and put up a fencing by the end of July, 1991. Immediately, the plaintiff issued a notice dated 25.07.1991 to the defendants 1 and 2 and the same was returned with an endorsement 'left'. The encroachment made by the defendants 1 and 2 is illegal and is not authorised by law. Therefore, the plaintiff has comeforward with this suit for declaration of his title in respect of the suit property and also for permanent injunction restraining the defendants and their men, agent, servants from interfering with the peaceful possession and enjoyment of the suit property and mandatory injunction for removal of the fencing put up in the suit property.

3. The defendants 1 and 2 in their written statement have stated that the Government of Tamilnadu has allotted the suit property to these defendants as per its order in G.O.Ms.No.2202 Revenue Department, dated 22.10.1990 and the land was handed over to the 2nd defendant on 22.05.1991 and the 2nd defendant has paid the cost of the land. The 2nd defendant had been granted patta for the allotted land as early as 12.06.1991. It is further stated that as per the said G.O., the Government of Tamilnadu has allotted 223 sq.mt in S.No.100/3 in Virugambakkam Village, Madras-92, out of 750 sq.mt to the 2nd defendant. The allotted land was handedover to the second defendant on 20.5.1991 and since the 2nd defendant has paid the cost of the land, the plaintiff knows fully well about this allotment order. The 2nd defendant also paid necessary amount to the government being the value of the allotted land and 2nd defendant is in physical possession and enjoyment of the allotted land along with her own land in survey No.100/5. The plaintiff ought to have impleaded Government as a party and therefore the suit is bad for non-joinder of necessary party. (Subsequently 3rd Defendant has been impleaded). The first defendant has sent a detailed reply to the plaintiff's notice on 14.08.1991. The plaintiff is not the absolute owner of the suit property. These defendants do not know the stay granted in W.M.P.No.99021 of 1989. These defendants have not encroached on the northern side of the property for about 3384 sq.ft of land and fencing by the end of July, 1991. These defendants do not encroach any portion in Survey No.100/3. The fence has been put up at the land allotted to the second defendant. Since these defendants are in possession of the suit property, the suit for injuction is not maintainable. It is barred under the provisions of Tamilnadu Act 24/78. The Civil Court cannot go into the question about any matters or proceedings under the said Act. The possession of the defendants is in pursuance of an order passed by the competent authority under the said Act. The lawful possession of the defendants cannot be challenged in view of Section 35 of the said Act. Hence, the suit is liable to be dismissed with costs.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The third defendant in his written statement would contend that since the plaintiff was the owner of the land in question, Urban Land Tax was levied in case No.32/845 of Virugambakkam dated 15.11.1977 in his name in respect of the lands owned by him in S.Nos.60/3, 92/1A etc., including the land in S.No.100/3 of Virugambakkam Village. Since the plaintiff had excess of vacant land as per the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamilnadu Act 24 of 1978), after observing all the legal formalities the land in question was acquired by the Government and was taken over possession on 06.01.1988. The plaintiff had not filed his objection for the acquisition and failed to avail the opportunity of preferring an appeal under Section 33 of the Act. After acquisition of the land under the Act, the Government in G.O.Ms.No.2202 Revenue Depart, dated 22.10.1990, have allotted the land to the second defendant on collection of the cost of the land, as per the recommendation of the Allotment Committee held on 25.04.1990. The amount payable for the excess vacant land was determined and 25% of the initial payment was worked out under Section 12 of the Act. Instead of getting the amount, the plaintiff filed writ petition in W.P.No.6686/1989 in the High Court. The Hon'ble High Court in its Judgment dated 30.7.1998 directed the Assistant Commissioner of Urban Land Tax, Kundrathur to issue notice to the plaintiff and proceed to determine the compensation for the excess of the land acquired. Section 35 of the Act provides that no order passed or proceedings taken by any officer or authority under this Act shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by any such officer or authority in pursuance of any power conferred by or under this Act. After acquisition of the land under the Act, the second defendant residing at Virugambakkam Village applied for allotment of land in s.No.100/3 of Virugambakkam Village. Except the said applicant, nobody applied for allotment. After observing all the formalities laid down in the Act, the Government in G.O.Ms.No.2202, Revenue Department, dated 22.10.1990 have allotted the land to her on collection of the cost of the land, a per the recommendation of the Allotment Committee held on 25.04.1990. The plaintiff had not filed any objection when actions under Section 9 to 11 of the Act were taken in the process of acquisition of the land as per the provisions of the Act. As per the Act, the excess vacant land has been acquired allowing family entitlement to the plaintiff. After publishing notification under Section 11(1) and 11(3) of the Act in the Tamilnadu Government Gazette and issuing notice under Section 11(5) of the Act on 08.09.1987 directing the plaintiff to handover the excess vacant land, the land was acquired. After the excess vacant land, was handedover to the Tahsildar, Mambalam-Guindy on 6.1.1988, the amount payable for the excess vacant land was determined and 25% of the initial payment was worked out under Section 12 of the Act. This amount was drawn and the plaintiff was asked to send advanced stamped receipt in Assistant Commissioner's (Urban Land Tax, Kundrathur) reference No. 3831/85 dated 27.04.1989. Instead of getting the amount, the plaintiff filed writ petition in W.P.No.6686/89 in the High Court, Chennai. In its judgment dated 30.07.1998 the Hon'ble High

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Court, Chennai, directed the Assistant Commissioner of Urban Land Tax, Kundrathur, Chennai-24, to issue notice to the plaintiff and proceed to determine the compensation for the excess of the land acquired by the Government from the plaintiff. Hence, the High Court has confirmed the acquisition of the excess vacant land by the Government. So it is implied that the title of the land in question is absolutely vested with the Government. Further, Section 35 of the Act provides that no order passed or proceedings taken by any officer or authority under this Act shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by any such officer or authority in pursuance of any power conferred by or under this Act. Hence, the suit is liable to the dismissed.

5. On the above pleading the learned II Additional City Civil Court Judge, Chennai, has framed six issues and on the basis of the documentary evidence Ex.A1 to Ex.A12 and Ex.B.1 to Ex.B11 and also on the basis of the oral evidence of P.W.1 to 4 on the side of the plaintiff and D.W.1 on the side of the defendants, has dismissed the suit with costs. Aggrieved by the findings of the learned II Additional City Civil Court Judge, Chennai, the plaintiff has preferred this appeal.

6.The point for determination in this appeal is whether the plaintiff is entitled for a declaration in respect of 3384 Sq.mt of land in the northern portion of the suit property in S.No.100/3 in Virugamppakkam Village, Guindy, Mambalam Taluk?

7.The Point:- I have heard the submissions made by Mrs.Chitra Sampath, advocate for the appellant and Senior counsel Mr.R.Gandhi, appearing for the respondents 1 & 2/Defendants 1 & 2 and considered their submissions. There is none to represent 3rd respondent/Government

7(i) The learned counsel appearing for the appellant would vehemently contended that even after the proceedings initiated by the Assistant Commissioner of Urban Land Tax, Kundrathur, for acquisition of the entire 1250 Sq.mt in S.No.100/3, the Government has so far not taken possession from the plaintiff/appellant by sending a notice as contemplated under Section 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1976 and that as per Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, Act No.20 of 1999, the entire acquisition has been vitiated as per Section 2 of the above said repeal Act. The learned counsel for the appellant focused the attention of this Court to Section 3 of the said Act 20 of 1999 (Repeal Act), to the Tamilnadu Urban Land (Ceiling and Regulation) Act and contended that repeal of the principal Act shall not affect if the vacant land has been vested under Sub-Section 3 of the Section 11 and possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. The learned counsel further contended that as per Sub-section 2 to Section 3 of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

above said Repeal Act, 1999 (Act No.20 of 1999), (a) where any land is deemed to have vested in the State Government under Sub-Section (3) of Section 11 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the state Government in this behalf or by competent authority; (b) any amount has been paid by the State Government with respect to such land, then, such land shall not be restored unless the amount paid, if any, has been refunded to the state Government.

7(ii) Relying on the above provision of law, the learned counsel for the appellant would contend that since the State Government has not produced any document to show that in pursuance of the acquisition of vacant land from the plaintiff under Section 11(3) of the Tamilnadu Urban Land (Ceiling and Regulation) Act, 1978, the 3rd defendant/Government has not taken over the possession of the land from the plaintiff and hence, the assignment of 223 sq.mt out of 750 sq.mt in S.No.100/3 of Virugampakkam Village in favour of the 2nd defendant-B.Karpagasundari under Ex.B.3 is not valid. It is pertinent to note here that Ex.B.3 assignment has been made by the government under G.O.Ms.No.2202 Revenue Department, dated 22.10.1990. The plaintiff has not challenged the said GO. It is the definite case of the 2nd defendant that only on the basis of Ex.B.3-assignment order, under G.O.Ms.No.2202, dated 22.10.1990, she is in possession of 223 sq.mt out of 750 sq.mt in S.No.100/3. The learned counsel for the appellant would attack Ex.B.7-Transfer charge certificate on the ground that 2nd defendant- B.Karpagasundari has been given the above said 223 sq.mt in Southern side of S.No.100/3 as new Sub-division No.100/8, but the second defendant has trespassed into the northern portion of S.No.100/3 and not on the southern portion of the property and hence second defendant is in possession of some other survey number property which is on the south of the suit property S.No.100/3. To substantiate this contention the plaintiff has not taken out any cross objection to locate that the second defendant has been allotted 223 sq.mt not in S.No.100/3 but in some other survey number, south of S.No.100/3. The plaintiff has not filed any iota of evidence to show that on the date of filing of the suit he was in possession of S.No.100/3 in Virugampakkam village. If the plaintiff is in possession of S.No.100/3 in Virugampakkam Village even after the acquisition of the land by the Government, he would not have filed W.P.No.6686/89 after notification under Tamilnadu Urban Land (Ceiling and Regulation) Act 1978, challenging the notice issued by the Assitant Commissioner of Urban Land Tax, Kundrathur, Chennai-29, under Section 12(6) of the Tamilnadu Urban Land (Ceiling and Regulation) Act. A reading of the order passed in W.P.No.6686/89 under Ex.B.1 will go to show that this Court ha given direction to the Assistant Commissioner of Urban Land Tax, Kundrathur, Chennai-29, to issue a notice to the plaintiff and proceed to determine the compensation for the excess of the land acquired from the plaintiff. Only for claiming compensation through a proper notice, the plaintiff has filed the above said W.P.No.6686/89. If the plaintiff is in possession of the land even after the acquisition notice under Section 11(3) of Tamilnadu Urban Land (Ceiling and Regulation) Act

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1978. The plaintiff would have challenged the very acquisition of the excess land by the Government by way of a writ petition contending that there was no proper notice under Section 11(5) of the said Act, issued for taking possession of the property from him. Under Section 35 of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978, there is a bar of jurisdiction to file any suit challenging the acquisition of land under the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978 as amended under Act 40 of 1996. Section 35 of the said Act runs as follows:-

> "Bar of jurisdiction of all Courts except the Supreme Court:-
>
> Not-withstanding anything contained in any other law, but save as otherwise provided in this Act, the jurisdiction of all Courts, except the jurisdiction of the Supreme Court, is excluded with respect to any matter which is, by or under this Act, required to be decided or dealt with by the competent authority, the Tribunal, the Court, the appellate authority, the State Government or the special Appellate Tribunal."

Section 35(A) of the Act 40/1996 is also a bar to file writ petition in High Court in respect of the dispute arising under the provision of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1978.

7(iii) The learned counsel appearing for the appellant relying on the decision reported in 2006(3) LW 445 (S.Subramaniam Vs. 1.State of Tamilnadu rep by the Secretary to Government, Revenue Department, Secretariat, Fort St.George, Chennai-600 009, 2.TheSpecial Commissioner and Commissioner of Land Reforms, Ezhilagam, Chepauk, Chennai-600 005, 3.The Competent Authority, ULC, and Asst. Commissioner of Urban Land Tax, Alandur, Chennai) and contended that as per the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act 20 of 1999, since possession has not been taken over by the Government, the entire acquisition is vitiated. But the facts of the above said case is entirely different from the facts of the case on hand because in the said case entire acquisition proceedings has been taken by the Government against a person who expired on 01.10.1993. Under such circumstances, it has been held by the learned Judge of this Court that the entire land ceiling proceedings initiated against the petitioner who died on 01.10.1993 stands abated, since there was no notice issued for taking possession of the property.

7(iv) The other case relied on by the learned counsel appearing for the appellant is reported in 2006(3) LW 50 (W.P.No.4062/2006) (Sosamma Thampy Vs. 1.The Assistant Commissioner (ULT),-cum-competent Authority (VulC) 153, Karnigar Street, Adambakkam, Chennai-600 088, 2.The Special commissioner and Commissioner of Land Reforms, Government of Tamilnadu, Ezhilagam, Chepauk, Chennai-600 005). The said writ petition was filed for declaration declaring that the proceedings initiated under the principal Act, 1978 by the first respondent has abated on the promulgation of Act 20 of 1999. In that case the learned Government Advocate for the respondents was not in possession to show from the records that the actual

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

possession of the land in question had been taken by the Government or that any compensation was paid to the petitioner for the lands sought to be acquired. Under such circumstances, it has been held that the proceedings initiated by the respondent for acquiring the land of the petitioner under principal Act 1978, stood abated on the passing of the Repealing Act 20 of 1999. But, here the plaintiff has so far not filed any writ petition challenging the proceedings initiated by the defendants for acquiring the lands of the petitioner under principal Act 1978 on the ground that possession has not been taken over by the 3rd defendant from the plaintiff. Ex.B.1 and Ex.B.11, orders in W.P.No.6686/89 and W.P.No.18710/1997 respectively, will clearly go to show that the acquired land had already been vested with the Government and that the plaintiff is entitled to only compensation in respect of the land acquired and vested with the Government. The order passed by this court under Section Ex.B.1 and Ex.B.11 have become final and the plaintiff so far has not challenged those orders of this Court. Even in the plaint filed by the plaintiff in O.s.No.7811/1996 there is no averment that the land acquisition made by the 3rd defendant is vitiated for want of notice under Section 11(5) of the Tamilnadu Urban Land (Ceiling and Regulation) Act 1976. Under such circumstances, the above ratio in 2006(3) LW 50 will not be applicable to the present facts of the case.

7(v) On the same ground the learned counsel appearing for the appellant also relied on another dictum for the same point in 2006(5) CTC 52 (W.P.No.20889/2003) (Vijay Foundation (P) Ltd., rep. by its Director, R.Thiagarajan, No.42/10, Kalaimagal Nagar, II Main Road, Ekkattuthanga, Chennai-600 097. Vs. The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-600 005 and others). The facts of the said case are as follows:

> " The writ petition is filed to call for the records of the second respondent in his proceedings in Na.Ka.S.R.154.98 dated 24.2.1998 under Section 9(5) of the Principal Act declaring the petitioner's land in S.No.429/1-C of Perumbakkam Village measuring to an extent of 3550 sq.mts. as excess vacant and the notice issued by him in 2nd respondent's proceedings R.C.No.154/98 in Form VII dated 30.11.1998 under Section 11(5) of the said Act requiring to surrender possession of the said land with the Tahsildar, Tambaram and the proceedings of the 1st respondent in his Endt. R.C.2896/2000-J1 dated 20.2.2003, and quash the same in so far as the petitioner is concerned and to direct the second respondent to declare that all proceedings taken by the second respondent to acquire the lands as excess vacant land hall abate under Section 4 of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The petitioner is a Company incorporated under the Companies Act. The property comprised in Survey No.429/1-C Perumbakkam Village to an extent of 1 acre is the subject matter of the Writ Petition. The said land was originally belonged to one Krishnan. The Said Krishnan sold 75 cents by executing three sale deeds dated 21.12.1984 each 25 cents to one J.Venkata Subba Reddy, Sudha and Balakrishna Reddy. The said three persons sold their respective 25 cents of land under separate sale deed in favour of the petition on 21.07.1995, 8.8.1995 and 18.07.1995 respectively. The said Krishan also sold 25 cents retained by him to the petitioner on 18.08.1995. Though the Tamilnadu Urban Land (Ceiling and Regulation) Act was introduced in the year 1978, the same was extended to Perumbakkam village only on 9.8.1995 by a notification in Government gazette under Section 48(2) of the Act. After extending the application of the said Act to Perumbakkam village, the respondents issued notice under Section 9(5) of the Act to the said Krishnan on 24.2.1998. It is stated that the said Krishnan was not available and hence it was served by affixure. Similarly, notices under Sections 10(1) and 11(5) were also served on the said Krishnan on 15.4.1998 and 30.11.1998 respectively by way of affixure. It is stated by the petitioner that despite the issuance of the said notices and the orders passed by the respondents, the property has been in the possession of the petitioner ever since from the date of purchase in the year 1995 from their vendors. The petitioner came to know about the proceedings initiated by the respondents against the said Krishnan only in the year 1999 and immediately they filed a writ petition in W.P.No.930 of 2001 seeking a writ of mandamus directing the respondents to declare that all proceedings taken to acquire the said land shall abate as per the provisions of Section 4 of the Tamilnadu Urban Land (Ceiling and Regulation) Repeal Act, 1999. The said writ petition was dismissed on 18.1.2001 permitting the petitioner to file an appeal before the appellate authority invoking Section 33 of the said Act. The petitioner also filed an appeal under Section 33 of the Act before the appellante authority on 20.2.2001. It is to be remembered that the said Act was repealed on 1.6.1999. Hence the appellate authority found that the appeal cannot be entertained in view of the fact that the act was already repealed, by order dated 22.2.2003. The present writ petition is filed seeking to quash the order of the appellate authority dated 22.2.2003 and ceiling proceedigns.

While disposing the writ petition, the learned Judge of this Court has observed as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The respondents herein have initiated acquisition proceedings against the person who is not at all owner of the lands. The above quoted mandatory conditions mentioned in Sections 7 to 12 were not followed by the respondents. The statutory conditions for the purpose of acquiring the lands has not been followed at all in this case, hence, the alleged possession taken by the respondents is vitiated. The Ceiling Act is not like Land Acquisition Proceedings where the authorities are required to serve notice upon the owner or occupier of the land and on such person known or believed to be interested thereon to show cause within 30 days from the date of service of notice as to why the lands should not be acquired, hence, based on the entries in the mutation proceedings, the opportunity be given to the owner or occupier or person interested in the land be sufficient because the Notification specifies the intention of the Government to acquire the land for public purpose, which is mandatory."

8. But in this case, admittedly the appellant is the owner of the land and after issuing 11(3) notice only the excess land found in possession of the plaintiff/appellant has been acquired by the Government. So far as this suit is concerned, the plaintiff clandestinely filed the suit for declaration and permanent injunction and mandatory injunction in respect of the suit property which has already been acquired by the Government. In spite of challenging the acquisition by way of writ petition, the plaitniff has filed the suit against the second defendant who has been allotted a portion of the acquired land in S.No.100/3, which has been reassigned as S.No.100/8 in Virugampakkam Village. Under such circumstances, I do not find any illegality or infirmity in the findings of the learned trial Judge holding that the plaintiff is not entitled to any relief as prayed for in the suit. The well considered order of the trial Court, for any reason, cannot be interfered with by this Court. Point is answered accordingly.

9. In fine, there is no merit in this appeal and accordingly the appeal is dismissed confirming the decree and judgment in O.S.No.7811 of 1996 passed by the II Additional City Civil Court, Chennai. In the circumstances of the case, there is no order as to costs.

WEB COPY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

https://hcservices.ecourts.gov.in/hcservices/

ssv

To,

1. The II Additional City Civil Court Judge,
Chennai.

2. The Section Officer,
V.R.Section, High Court, Madras

1 cc To Mrs.Chitra Sampath, Advocate, SR.1563.
1 cc To Mr.A.R.Nixon, Advocate, SR.1525.

A.S.No.494 of 2001

MJ(CO)
RVL 29.01.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/